IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.93 OF 2006

Metro Tiles and Anr. .. Petitioners

Versus

Sushila Naraindas Chhabria .. Respondent

Mr.J.S.Shah for petitioners

Ms.Kavita Lalwani for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th January 2006.

P.C.

. After hearing learned Counsel appearing for petitioners and perusing annexures to the petition, including impugned order, in my view,

no intereference is permissible under Article 227 of Constitution of India with the order passed by the trial court on summons for judgement directing conditional leave to petitioners to defend the suit upon depositing a sum of Rs.20,000/-. The order that is passed is after taking into account the nature of the claim in the suit, viz., it being based on a negotiable instrument. The argument that consideration had not passed has rightly been rejected by taking into consideration the fact that the suit is based on negotiable instrument. Judgement of Supreme Court in the case of M/s.Sunil Enterprises and Anr. Vs. SBI Commercial and International Bank Ltd., reported in A.I.R. 1998 S.C. 2317 relied upon by the learned Counsel before me can have no application because there, the submission was that the entire transaction was a fraud. Considering the nature of the defence, the Supreme Court made the observations in para 3 of the said judgement. That apart, the

Court below was satisfied that if conditional order is not passed it would only amount to accepting plea which is devoid of any merits and made for prolonging the proceedings. Petition, therefore, is dismissed.

(S.C.DHARMADHIKARI, J)